

THE MASAI PENAL CODE

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E'-TOOSHO : ASSAULT

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Resulting in the loss of an eye—no penalty.

Resulting in the tearing of an ear-lobe—a fine of one ewe.

Resulting in the loss or breaking of a tooth—a fine of one ewe.

Resulting in the breaking of a bone—an ox of the offender's (he may not have been the aggressor originally) is slaughtered then and there, and all partake of it. The injured man must not see the skin of the slaughtered ox. At the same time, a fine of one heifer is inflicted, but if the injured man should die before this has been handed over, twenty and nine cattle may have to be paid subsequently by his slayer.<sup>1</sup>

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To strike a man with an arrow, a club, spear, sword, or knife would result in the imposition of a fine of one fat sheep or one ox, according to the extent of the cuts or other injuries inflicted.

The preceding penalties refer to Masai only. If the murdered man be a Bantu or savage (*Ol-meeki*), and if he was known to and a friend of the Masai, twenty and nine cattle must be paid to his relatives. In the case of the murder of or assault on a stranger, no penalty is laid down.

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The reiteration of the number nine in the fines prescribed may be explained as follows. A certain round number of cattle is settled upon as fine or compensation. To this number (generally twenty or forty) must be added nine more for the body of the murdered man, in order to wipe out the stain of blood which lies between the rival parties. These nine cattle are accounted for according to the orifices of the human body, thus two for the ears; two for the eyes; two for the nose; one for the mouth; one for the urethra and one for the anus.

'NYAMIN : THEFT

Theft of any kind is almost unknown among the Masai, but if one Masai should steal cattle from another, the thief must pay five beasts for each beast stolen, the sex of the animals paid depending on the sex of the stolen beasts. If sheep are

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<sup>1</sup> See Hollis, *The Masai*, p. 312.

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recovery from their pains. Mbatyan earned outstanding merit through the discovery of a protective vaccination against lung disease of cattle. According to the corresponding accounts of Zendeo and four old Masai, Mbatyan, several years before his death, had already prophesied the appearance of rinderpest that did not take place until after it and the subsequent subduing of the Masai by Europeans. In the outward appearance of this man nothing divulged his power. On a thin, average-sized figure sat an ugly head whose face was disfigured more particularly by the lack of one eye -- allegedly a birth defect. This latter circumstance led to the origin of the legend that the chief must always be one-eyed and that the father should destroy in childhood one eye of the son later following him. The face was even more repulsive because of a scanty, slightly gray full beard. That is, in contrast to the other men, neither the ol oiboni nor the el goiatek and el kiborön mentioned farther below may pluck out their beards, because they would lose their supernatural power through the removal of the beard hairs.

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The chief's village consists of a large number of kraals lying close together, several of which serve as the dwelling of the ol oiboni with his numerous wives. Mbatyan had about 200 wives; the still young Zendeo has only 20 of them. No strange man may enter these dwelling kraals of the chief and his wives or appear in their immediate vicinity. Close by are found the rest of the kraals, one of which is intended for conferences and receptions and in which a few older men close to the chief as helpers and advisers (el dunganak oirorié ol oiboni) live with their families, whereas the others are occupied by warriors who form the defense of the village and, on the marches of the chief, his bodyguard. In his last years of life, when Mbatyan was mentally disturbed, he often spent months on the open steppes in a small hut made of branches, around which the warriors accompanying him camped in a large circle. The ceremony in the chief's camp is very simple. One of the men wandering about idly in the village leads the newcomer into the conference kraal, where he waits for the chief. As soon as the latter appears, the stranger

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791 rises, goes toward him, and, with the customary greeting, extends  
576 his hand to him, whereby, not this, but the wrist is grasped. After  
609 the concluded discussion, for which there are no particular formalities, he takes his leave with the ordinary farewell.

791 In the way of food, the ol oiboni takes only goat liver roasted  
789 on the fire, milk, and honey, for, through any other food, "he  
[262] would suffer the loss of the capacity for prophecy and the preparation of efficacious magic charms." Of these arts very little is  
[173] supposed to have been handed down to his son Lenana and still less to Zendeo, through which it is all the more explicable that the  
/22/ Masai today tell of hundreds of different kinds of miracles that Mbaryan allegedly performed. According to them, he could fell large trees by sheer will power, or he had the hut in which he was to be found set afire by his attendant, and, after it had burned down, he appeared, uninjured, out of the ashes.

756 From the En gidon lineage there are further supplied, as has  
613 already been mentioned, the sorcerers or medicine men (ol goatiki, el goiatek), several of whom live in each district. Their office, too, is handed down from father to son, who, however, is usually initiated into the whole secret art only after his marriage. The  
[789] most important magic charm in the life of the Masai, the war medicine, the ol goatiki does not know how to make. Rather, one turns to him only in cases of illness of human beings and livestock for which the well-known remedies fail, or which one traces back to the sorcery of evil neighbors, as well as to determine unknown wrongdoers (thieves, murderers, etc.).

613 The lineage of the El kiboron of the El mûleljan tribe, who,  
[776] according to the view of all the people, are especially favored by 'Ng ai, the god of the Masai, which has made them primarily the bearers of the religious traditions, require a special discussion.  
613 Corresponding to their position with 'Ng ai, they are distinguished  
157 by a relative peaceableness. The young warriors, to be sure, also set out on raiding expeditions with the other lineages, but they thereby seem to avoid any unnecessary roughness or brutality, in which the others often compete. The passion for disputes, quarrels, and vituperation, a prominent trait in the character of the young

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As a servant of Europeans the Masai in general shows the same moral quality as the members of other tribes from the interior of East Africa (1).

1. I became acquainted with youths of ten different tribes of the interior. They are all quite considerably better, though also more inept in the beginning, than the brazen-impudent, conceited, and thievish nigger-dandy of the coast.

There is just as little domestic-servant faithfulness and dependability as there is constancy and gratitude for benefits enjoyed. An opportunity to rob the master is happily utilized; in the kitchen, meat, milk, and butter especially disappear. In the pasture the Masai herdsman draws off milk from the cows and blood from the oxen and sucks fat from the tails of sheep. One time the herdsman came home from the pasture in the evening, quite out of breath, and lamented that an elephant coming in the vicinity of the herd had scattered the cattle by its bellowing. In spite of a diligent search, two head of cattle were supposedly lost because of it -- two cows, of course! This was indeed very annoying, but was not to be altered, and I contented myself /118/ with ordering the herdsman to stay closer to the station with the herd. About eight days later the same incident -- ostensibly -- happened, and again it was two of the best cows. If that had gone on, we would have been rid of the entire herd in a few months. The warning had been useless, so the shepard was given a sound thrashing. And behold! From then on not only did the elephants remain away from the herd permanently, but even the cattle that had last disappeared showed up again. He had stolen them and given them to a friend for safe-keeping. Another case. A settler had a herd of fine select livestock about two hours from the farm in a secure palisade-kraal and in the care of a number of Masai in his service. A mark had been scratched into the hide of the cattle. One day the herdsmen brought a number of cows to the farm with the observation that the mark had grown over and would have to be cut again. The owner did

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177 this and discovered to his sorrow that the cows had wasted away in  
181 the last few weeks to the point of being unrecognizable. If he had  
609 examined them more closely, he would also have found that they  
466 had aged several years in the preceding month. But he had no  
thought of any dishonesty of the people, whom he considered  
honorable and good, until after more than 100 of his finest cows  
had been exchanged for old, worthless ones and he had unsuspect-  
ingly marked all of the latter. One could cite a whole series of  
such examples instructive for the settler, but here let there be  
pointed out only one particularly popular trick: When in the evening  
the livestock of the settler is driven to water, the native stock-  
owners -- both Masai and Negroes -- also like to drive their herds  
into the vicinity of this watering place. In the press and haste of the  
livestock for the water, there run into the herd of the European, as  
intended, a few head of the cattle of the Black, who now, instead of  
taking his stock out of the strange herd again, moves off with a  
corresponding number of the settler's best cattle.

177 When the Masai servant who regularly invested his savings in  
181 cattle has assembled a small herd, he often enough leaves service  
464 in order to return again to his people. If an opportunity presents  
609 itself, it may happen that he now serves his compatriots as a spy  
[454] against his former master. Uncircumcised youths who hire themselves  
out as boys return to their native kraals for circumcision, live there  
a few years with their contemporaries in the usual manner, and then  
often go back into service.

177 The Masai living in the tribe is and remains mistrustful of every  
181 European whom he has not become intimately acquainted with  
609 through the years. He regards the latter's honesty and forbearance  
829 as weakness and believes that it is only because of a lack of strength  
and cleverness that the European does not oppress him just as he him-  
self does this with the Negroes. He performs a service for the European  
only in order /119/ to have some -- often enough illegal -- benefits  
from it. If he concludes friendship with him, it is done merely for  
the sake of appearances and a momentary advantage. As one accused,  
he almost never confesses, even with guilt proved, but rather, asserts  
with profound indignation: "A Masai does not do anything like

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that" (1).

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1. When, after receiving news of an ugly misdemeanor or crime, I spoke to one or another more trustworthy Maasai about the unknown culprit, I often heard: It was surely not a Maasai. A Maasai would not do anything like that. Such things do not happen among the Maasai.

Though he may know better, he accuses an oi masai just as unhesitatingly as he accuses a fellow tribesman (7).

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2. It may be mentioned here that, according to my observation, the insincerity and dishonesty of the people belonging to the blacksmith caste are decidedly greater than that of the other Maasai, so that it seems as if the contempt and bad treatment that the former experience from the latter have bred an inferiority of character in the course of the millenniums.

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The mental superiority of the European impresses him only in high cases where it has convicted him of some villainy, while his technical skills rank far too much of the despised "oi konyi" to the Maasai to seem worth notice. It is solely the guns of the Protectorate Troops that obtain for the white man respect and influence among the Maasai and have made this master race of East Africa somewhat more modest.

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The picture becomes more gratifying if one observes the Maasai in intercourse with his own kind. Dabiti gi guthi sidi gi masai = make a good mouth toward the Maasai, that is, be good, friendly, sincere toward your fellow tribesmen.

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If we summarize the traits outlined above, there results, on the one hand, the fact that the character of the Mami in general reveals the same virtues and vices as that of other primitive peoples, but then also that the Mami are definitely to be counted among the better half of these peoples.

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The following little story, which a man from the Killimandjaro area of Mombasa once told me, shows how the Negroes illustrate the character of the Mami. "It was many years ago when we still fortified the area well with ditches and then hedges and the few approaches were both made hidden and well guarded. One day a couple of our people went into the steppe to see whether an elephant had fallen into the trap pit made there. There in the bush they found an old, sick Mami near starvation. Full of compassion, they took him home with them, where he gradually recovered. The convalescent seemed filled with gratitude and swore eternal friendship toward his benefactors when he departed to seek out his herd again. A few days after his departure the war cry of our people suddenly resounded one night throughout the area. The Mami had come to make war on us, led by that old man who during his stay here had become familiar with the roads and bypaths and who owed his life to us."

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Amusement, depending on its degree, is expressed by a more or less wide opening of the eyes and the mouth, as well as by a simultaneous raising of the eyebrows.

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A feeling of shame is manifested by a darkening of the skin of the face and often also the throat, corresponding to the "blushing" of the white race. In order to express indignation one looks at the other with wide-open, staring eyes often cast downward. One observes the same in the case of obstinate children.

In reflection the forehead is wrinkled longitudinally and often also transversely in its middle section.

To express ill-humor, depression, anger because of loss, etc., one scratches the head bent to one side -- usually to the left -- with the right hand and thereby wrinkles the forehead transversely above the root of the nose.

121. educations usually regard them as savages and an embarrassment to the advancement of their country. Intentionally or otherwise, information from such sources is very likely to be biased.

123 It is often difficult to get accurate information  
• [609] about the Masai from the Masai themselves. Being ultra-conservative and suspicious, the Masai appear to regard with mistrust anyone who is pointedly interested in them or their livestock, and anyone in government. Their answers are affected by this attitude.

124 Interpreters are another, often-unrecognized  
[28] source of misinformation even for the objective investigator. Whether the interpreter is a Masai or is from another tribe his interpretation may be affected by the factors discussed above. Interpreters frequently "interpret" what they think will please the questioner out of politeness and a desire to please. Occasionally interpreters misinterpret for other reasons. When the language interpreted was Swahili which I understood I have heard interpreters misinterpret when the true answer would have involved the interpreter in more work or an arduous journey. Another good example is the African who interpreted for an American anthropologist who spent several months living with the Masai, but did not learn

124 Swahili. Many Masai in the area speak some Swahili, so  
(191) using Swahili and a limited number of Masai nouns we usually could converse with Masai throughout the study area. Occasionally we had the services of interpreters.

123 These Masai regard visitors in their country with  
• (609) interest and guarded suspicion. The suspicion is greatest if they believe the visitors are representatives of the Government. After we had lived on safari in Western Masailand for some months constantly moving from place to place the Masai appeared to accept us as a harmless, neutral, and occasionally interesting phenomenon.

Our status with them was helped by our work  
(237) with grass and animals. Above all else the Masai appear  
(141) concerned with animal husbandry. They have a lively interest in wild animals, appreciation for domestic livestock that is almost reverence, and an understanding of the importance of grass. Our work on these things therefore seemed understandable. Beyond the frequent initial query: were we with the Government, there was never any question of why we were working there. The Masai appear to accept without question that white men are prone to the strangest behavior. Movie companies and some tourists fortify this conviction.

123 Our use of the capture gun to capture and mark  
824 wild animals was of particular interest to the Masai.

123 They would often come up to watch us. Masai are famed  
461 for their refusal to carry out manual labor of any sort  
824 hence are regarded in East Africa as poor helpers on  
safari. However, labor, where it involves animals,  
is another matter. Sometimes Masai would come up and  
voluntarily help us handle captured animals, and this they  
did very well. We even experienced Masai coming to our  
camps to talk about our capture work that they had  
observed from a distance.

123 When we had extra meat from animals that we  
262 collected, we took it to the nearest Masai village.  
609 Most writers have reported that Masai will not eat the  
meat of most wild animals. We found, however, that  
they gladly accepted it in most cases. They always  
wanted to know what animals were involved. In several  
cases, when we first approached a village those who came  
out to meet us would refuse the meat. Then someone  
who knew us or knew of us would appear and accept the  
meat, explaining that the others did not know us.

123 Virtually all visitors to Masailand are regarded  
757 as a sort of travelling dispensary by the Masai. This is  
true throughout the world for most people who do not have